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Book Reviews

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BOOK REVIEWS

Arbitration in Action. By Frances Kellor. New York: Harper & Brothers, 1941. Pp. 412. $3.50.

When one speaks of democracy today he has in mind a way of life in which the individual is allowed the maximum freedom to follow his own inclinations subject only to the qualification that his activity must not infringe upon the liberties of others—a society or political system in which the majority rules, but the minority is protected and its rights and privileges respected. To attain and maintain this way of life we have set up a government of divided powers and it is the function of the judicial branch to fix the necessary limitations upon human conduct as between individual and individual and as between the individual and society—the law courts are the means we have devolved for the peaceful, orderly and just settlement of differences that arise among us.

A properly functioning independent judiciary is an absolute essential of democracy—without it there can be no democracy—and when one considers that the courts are for the protection of the individual from oppression as well as society it is to be wondered at that the average citizen is so reluctant to have anything to do with them, whether as witness, litigant or juror. This reluctance, however, is to some extent at least understandable. To the layman the language and the ways of the courtroom have come to be strange, complex and technical and he often feels awed, out of place and ill at ease. Often he concludes that juries are not a means of arriving at justice but a gamble pure and simple; or he may become impatient and disgusted with what appear to him to be unnecessary and long delays.

Enlightened members of the Bar are aware of such criticism, realize that it is at least partially justified and that there is need for reform in our judicial system—for simplifying and expediting the processes of the courts. The recent restoration to the Supreme Court of the United States of the power to make rules of procedure for the federal courts and the promulgation and adoption of the federal rules have to a very great extent simplified and expedited the workings of those courts so that they now much more satisfactorily and economically and doubtlessly more justly serve the people. A similar restoration to the Supreme Court of North Carolina of the power to make the rules for the state courts, advocated these several years by leaders of the Bar of this State, would unquestionably result in similar improvement in the workings of the state courts. Other reforms that should help considerably to restore the confidence and respect of the people in and for the courts

are: (1) the adoption of the American Bar Association plan for the selection of judges—appointment from a panel to be submitted by a commission on a nonpartisan, nonpolitical basis—in lieu of the present partisan, primary-and-election and, in case of vacancy, appointment-to-pay-political-debts system; (2) the complete separation of our criminal and civil courts with separate judges since the problems of the two are entirely different and require different treatment; and (3) the reform of our Justice of the Peace courts system as advocated by the North Carolina Bar Association these ten years or more.

Partially at least as a result of the layman's dissatisfaction with the workings of the courts, we have witnessed the growth of arbitration as a means of settling differences between individuals or between individuals and/or corporations and other units of individuals; that is, civil or economic disputes or differences as distinguished from criminal. In addition to the speediness of arbitration, that is the saving of time, the simplicity of the procedure and the privacy appeal to many disputants. All proceedings involved in arbitration are private and no publicity need be attendant upon them as in the case of litigation in the courts. Many people feel that the settlement of differences whether in court or otherwise is properly the business only of the parties involved and in many instances deplore the usual newspaper and other publicity, often sensational, given to the trial of cases in the law courts—in fact it has been said with some reason that the one mistake the founding fathers made in drafting the bill of rights amendments to the Constitution of the United States was in failing to include among the inalienable rights of the citizen a right of privacy, at least as to his own personal affairs.

Probably the leading authority in this country on the law of arbitration is Professor Wesley A. Sturges of the Law School of Yale University. His treatise, *Commercial Arbitrations and Awards*,[1] is the comprehensive authoritative work on the subject and it is interesting to note that he is at present engaged in a revision of the book to include the rapidly growing and increasingly important field of labor disputes.

Miss Kellor's book is not intended to replace or supplant Professor Sturges's. It is rather a practical manual for the guidance of the layman as well as the lawyer. Published in late 1941, it comes at a time when we are under the necessity of conserving time and energy in our war effort and will doubtless resort more and more to arbitration for the settlement of commercial and industrial disputes since arbitration affords a speedy, efficient, economical and less technical method of doing so. The author is executive vice president of the American Arbitra-

[1] Published by the Vernon Law Book Company, 1930.

tion Association and, as such, is thoroughly familiar with the rapid and extensive development during the past fifteen years of the modern effective system of arbitration in this country—statutory as distinguished from the old ineffective common law arbitration.

Prefatorily, Miss Kellor says that "*Arbitration in Action* is written in response to an overwhelming number of inquiries on the subject of arbitration, by men, organizations, companies and unions who want to know how, when and where to arbitrate disputes. They are asking for the technique of arbitration and for practical suggestions as to how they personally can use it to their own advantage and to that of a country faced with the immense problems of war production.

"*Arbitration in Action* offers a short cut to this information for it undertakes to set forth principles and standards of law and practice and a way of proceeding under them, so those actively engaged in industry and commerce need not take the time to write the American Arbitration Association for information or go blundering along looking for the answer. . . ."

The book describes in detail the methods, steps and processes involved in the usual commercial arbitration as well as the parties, arbitrators and others involved in such a proceeding and their functions. It is largely factual and explanatory and on the whole may be said to be a concise and most helpful guide for one having the need to proceed with an arbitration or for other reasons desiring to familiarize himself with this process of settling disputes, although the book is not entirely free from the author's enthusiasm for her subject. This is naturally to be expected, however, when one considers her experience and position as an officer of the American Arbitration Association and it can hardly be said that the evidences of her enthusiasm approach the realm of propaganda.

The author makes the mistake of neglecting the lawyers—all too little mention is made of them and one would gather the impression that legal counsel is often if not usually unnecessary or not to be desired. But in most arbitrations the skill of the lawyer in clarity of statement and analysis and his experience and facility in presentation and orderly procedure make his employment highly desirable if not absolutely essential; and he is probably indispensable in cases in which the courts have to be called on to enforce an agreement to arbitrate, or an award must be made a judgment of the court, and/or the powers of the court must be invoked to enforce such a judgment.

In addition to the description of the usual commercial arbitration which the author calls general procedure, there is also an explanation of three special procedures: the arrangement for the settlement of inter-

American disputes—differences between businessmen of different countries of the Western Hemisphere; the Accident Claims Tribunal in New York; and the Motion Picture Arbitration system—set up under a consent decree of the federal court in a prosecution of motion picture producers under the Sherman anti-trust law.

A most important and helpful feature of the book is the very complete and up-to-date summary by Professor Sturges of the several federal and state statutes governing arbitration. There is also a copy of the United States Arbitration Act; the New York Arbitration Act (New York was the first state to enact a modern commercial arbitration law, is considered the leading state in this field, and its decisions on the whole are considered more authoritative than those of the courts of any other state); the rules of procedure followed by the American Arbitration Association in commercial arbitrations, in industrial arbitrations; the rules of procedure for inter-American tribunals; the rules of procedure for the New York Accident Claims tribunal; the pertinent portions of the decree setting up the Motion Picture Arbitration system and the rules of procedure and method of appeals; and standard arbitration clauses.

Besides the federal government, fourteen states[2] and the Territory of Hawaii have statutes providing for the enforcement of agreements to arbitrate disputes that may arise in future between the parties to the agreement, and the courts of three states, Colorado, Minnesota and Washington, have held such agreements enforceable in the absence of statutes. A number of other states—among them North Carolina, whose statute was enacted in 1927—provide for the enforcement of agreements to arbitrate disputes that have already arisen between the parties. But by far the greater number of cases of arbitration are those involving disputes that have arisen after the agreement to arbitrate has been entered into, and not those involving disputes that have already arisen at the time the agreement to arbitrate is made; so really to be effective a law providing for the enforcement of agreements to arbitrate must cover agreements involving disputes that may arise after the agreement is made.

It usually takes from six months to two years to get to trial in North Carolina after a suit has been instituted while in practically every instance arbitration may be completed within from five to sixty days. There is just as much legal work to be done in the average arbitration as there is in the average law suit, but an agreement to arbitrate a dispute that may arise in future is not enforceable in this state, unless

[2] Arizona, California, Connecticut, Louisiana, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, and Wisconsin.

perchance the Supreme Court in a proper case so holds as did the courts of last resort of the three states mentioned, for the General Assembly at the last three or four sessions has killed, in committee, the bill to amend the present statute[3] to provide for the enforcement of such agreements.[4] As far as North Carolina is concerned practically all of the arbitration being done, particularly in the various branches of the textile business which is of tremendous and increasing importance in this state, is going to New York. As a consequence North Carolina lawyers are being deprived of considerable business which should come to them but is now going to New York lawyers.

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[3] Chapter 94, North Carolina Public Laws, 1927; Article 43A, Chapter 12, North Carolina Code.

[4] The proposed amendment to the present law was drafted by Mr. MacClamroch. It has been reported unfavorably by committees of the House of Representatives of the General Assembly at each session at which the bill has been introduced. The arguments used against the bill have been the old stock objection that the courts should not "be ousted of their jurisdiction" and that the amendment was just another scheme to take away business from the lawyers. The answer to the first argument is that this makes little difference and to the second that lawyers would gain business rather than lose it should the law be amended.